



123

AF 3652

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Alvin L. Neeley)	Art Unit:	3652
Serial No.	09/440,149)	Examiner:	Underwood, D.
Filed:	November 15, 1999)	Cust. No.	22931
For:	MANHOLE COVER LIFTING)	Attorney	
	APPARATUS AND METHOD)	Ref. No.:	P112554

RECEIVED

MAR 05 2004

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandra, VA 22313-1450

Certificate of Mailing (37 CFR 1.8a)

I hereby certify that this document (along with any document referred to as being attached or enclosed) is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on date shown below.

February 27, 2004

Date

Jane E. Powles

GROUP 3600**REPLY BRIEF TO EXAMINER'S ANSWER**

Sir:

This Reply Brief is in response to the Examiner's Answer to the Brief filed by the Applicant's attorney, the undersigned herein. The Examiner's Answer was mailed on January 8, 2004 and the Reply Brief is due this March 8, 2004. It is believed that no fee is due at this time to maintain this application and the present appeal proceeding in full force and effect. However, if any such fee is due, please charge this to Deposit Account No. 08-3260.

In the Examiner's Answer, on Page 5, in the 4th paragraph the Examiner made the following argument:

"Appellants' arguments on Pages 36-40 regarding Schaller set forth that Schaller is non-analogous since it relates to a hoist mechanism for moving a cover for an electric arc furnace which is relatively immune to heat and the effects of electric heat. The examiner's position regarding this reference is set forth in the paragraph bridging pages 38 and 39 of the brief. In addition the Board's attention is directed to the classification of Schaller, i.e., class 212, subclass 166. Subclass 166 is directed generically to closure removers not covers for furnaces. One of ordinary skill in the art would have sought out this area."

This position taken by the Patent Examiner is contrary to a long established principal of patent law. An early landmark case which establishes this is *In re Mlot – Fijalkowski*, (676 F. 2 d at 669 n.5, 213 USPQ at 715-16) is one of the landmark cases. The Court characterized classification evidence in the Patent Office as of “limited value”: “such evidence is inherently weak. . . because considerations in forming a classification system differ from those relating to a person of ordinary skill seeking solution for a particular problem.”

At the risk of being repetitious, as indicated in the arguments in the Brief submitted on behalf of the Applicant, it is difficult to imagine two areas of endeavor which are more widely separated (i.e. the task of removing and replacing manhole covers in a street location and the task of providing for an electric furnace a hoisting mechanism that is able to withstand an extreme high temperature environment). The problems encountered are far removed from one another. The main problem at hand by the present invention is providing a user friendly means of lifting a manhole cover to alleviate back problems of the workers. The main endeavor of the Schaller patent is to provide a hoist that can withstand the high temperature environments in a factory environment where there is an electric furnace. It would take a substantial leap of imagination to envision that this mechanism (such as shown in the Schaller patent) could be adapted by making it into a small moveable device where there is a pivotal location on the one side of the manhole and wheels on the other for use in an entirely different environment.

To put this in a practical context, let us say that we selected at random twenty people who work in this particular industrial endeavor, namely servicing these various underground utilities that have manholes. We will assume for the moment that at least ten of these twenty people would be of average skill in this particular art. Then, let's assume that we gave all of these twenty people of both the Schmitz et al. patent and the British patent, and we ask them to look at these patents and try to come up with some improvements. Is it conceivable that half of these people would somehow come across either the Schaller patent, or actually come across the industrial application of these electric furnaces in their search to find a better way of removing manhole covers? Or what are the odds that ten out of these twenty people would have found the Schaller

patent and then also had the imagination to re-adapt it to apply it to their problem of properly removing manholes. Again, with all due respect to the Examiner's position, it would seem to the undersigned that it would take some incredible leap of the imagination to think this would occur.

Then we turn the situation around and picture a person who is given only the Schaller patent dealing with electric furnaces and ask that person to look at that furnace as described in Schaller and to derive some improvements. The wheeled removal system is only peripherally mentioned in two lines of the text of the patent. What are the odds that this person would ever come upon the Schmitz et al. patent or this British patent and conceive the idea of placing a pivot there on wheels on the other side in the manner taught in the present invention.

Let us keep in mind that this combination is supposed to be "obvious" to one of "ordinary skill in the art".

Accordingly, it is again urged that this combination of references to reject the present application is improper and it is requested that the decision of the Examiner be overturned.

Respectfully submitted,

ALVIN L. NEELEY,

By 

Robert B. Hughes, Reg. No. 19,304
Hughes Law Firm, PLLC
Pacific Meridian Plaza
4164 Meridian Street, Suite 302
Bellingham, WA 98226
(360) 647-1296
Fax (360) 671-2489